IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B. CIVIL MISC. APPEAL NO.2334/06

The New India Assurance Co. Ltd.

Vs.

Shunti @ Harvindar Singh & Ors.

DATE OF ORDER :: 03/11/2006

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Virendra Agrawal, for appellant

BY THE COURT:

Instant appeal has been filed by the insurer against the impugned award dated 24th April, 2006 questioning the finding recorded in relation to issue no.4 and so also quantum of compensation awarded.

The claimant, Harvindar Singh was 27 yrs. of age. While going in Car No.RJ-20-1C-1144 along with Balvinder Singh who was driving the vehicle on 7th December, 2004 at about 12.30 AM when reached near Adalat Chauraha infront of STD shop, the vehicle collided with tree and on account of which, he got grievous injury.

The appellant filed reply to the claim application and raised objection that since the vehicle was driven by Shri Balvindar Singh with whom the present claimant was traveling, was under intoxication and due to which, the vehicle collided with tree resulting grievous injury sustained by the claimant. As such, it was the case of breach of policy and the insurer is entitled for recovery rights from the owner of the vehicle. The

objection has been raised regarding the quantum of compensation awarded under the impugned award, but no submission has been made questioning compensation.

I have considered the submission of the counsel and perused the finding recorded under the impugned award.

Learned Tribunal has considered the submission made by the counsel for appellant while dealing issue No.1 in detail. Statements of ANW-1 Satya Narain and ANW-3 Dr. Subhash Verma have been recorded where the only fact which has been deposed by them is that driver of the vehicle had consumed liquor and it cannot be said whether at the time while driving the vehicle, he was under intoxication and at the stage of cross examination it has been stated that even there are drugs which contain alcohol. Taking note of material which has come on record, the learned Tribunal has recorded finding that the accident has not taken place because of the reason that driver was under intoxication.

I do not find any error in the finding which has been recorded by the learned Tribunal while dealing with issue No.1. As such, in the absence of violation of condition of policy, the insurer is not entitled to claim recovery rights and no error has been committed by the Tribunal in awarding compensation under impugned award.

Consequently, the appeal fails and is hereby dismissed.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.